1020

Appeal Procedures Employee Plans Examinations

Department of the Treasury **Internal Revenue Service**

Publication 1020 (Rev. October 1988)

These instructions apply to actions proposed in the revocation letter, nonqualification letter, or examination report for:

(1) **Employee plans information returns in the Form 5500 series** relating to

(a) Revocations in those cases in which a favorable determination letter was previously issued by the Internal Revenue Service (IRS), and

(b) Nonqualifications in those cases in which the employer has not received a favorable determination letter from the IRS;

(2) **Employee plans tax return Form 5330** relating to minimum funding matters under section 412 and prohibited transactions under section 4975 of the Internal Revenue Code; and

(3) **Form 990-T** reporting the employee plan's unrelated business income tax liability.

The following tells what you should do if you agree and explains your appeal rights if you do not agree.

INSTRUCTIONS

If You Agree

If you agree to the action proposed with regard to the employee plans information return (Form 5500 Series), you do not need to take further action. Your case will be processed on the basis of the proposed action.

If an employee plans tax return Form 5330, or Form 990-T, is involved, please sign the enclosed agreement form. By signing this form, you will agree to the amount shown on the examination report. If you owe additional tax, any interest charge will stop 30 days after you file the form. No further interest or penalties will be charged unless you do not pay the amount you owe within 10 days after the date of the notice you will receive requesting payment.

If you pay the tax when you sign and file the agreement form, interest stops immediately. Please make your check or money order payable to the Internal Revenue Service. Include interest figured as explained in the enclosed Notice 746 on the additional tax (but not on penalties) from the return's due date to the payment date. Be sure to include your employer identification number on your check or money order. Please do not send cash through the mail.

If the examination results in an overpayment, you will receive interest (see Notice 746) on the amount of the overpayment.

If You Don't Agree

You may appeal your case to the Office of the Regional Director of Appeals. We urge you to take the issue to the Appeals Office before going to court. Many differences can be settled without expensive and time-consuming trials.

To get consideration by the Appeals Office, you must file a written appeal with the Key District Director. Please send it to the address on the letter you receive with these instructions. The appeal should be filed within 30 days from the date of the letter and should contain the following:

1. A request for an Appeals Office conference.
2. Your name and address.
3. The date and symbols from the Key District Director's letter transmitting the findings you are appealing.
4. The tax periods or plan years involved.
5. A statement of the issues and arguments in law or other authority supporting your position.
6. A statement of facts supporting your position in any contested factual issue.

The statement in item 6, above, must be declared true under penalties of perjury. You can do this by adding the following signed declaration:

> "Under penalties of perjury, I declare that I have examined the statement of facts in this appeal and any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

If your representative prepares the appeal for you, a declaration may be substituted for the statement. The declaration should state that the representative (1) prepared the appeal and the documents with it, and (2) knows personally that the statement of facts in the appeal and the documents with it are true and complete.

Qualification/Deduction Issues

When the Employee Plans/Exempt Organizations (EP/EO) Division in the key district examines a Form 5500, a determination may be made that, although the

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employee plan is qualified, an adjustment should be proposed to the amount deductible on the employer's income tax return as a contribution to the employee plan. In that event, the proposed adjustment will be referred to the Examination Division since it is responsible for examining the employer's income tax return. An employer who does not agree to a proposed adjustment to income tax may appeal under Examination Division procedures and not under these procedures. The Examination Division will inform the employer of the appeal procedures for income tax deficiencies.

However, when the EP/EO Division examines a Form 5500 and determines the plan is not qualified, that Division will issue a proposed revocation letter, or proposed nonqualification letter if appropriate, regardless of the potential adjustment of the employee plan deduction on the employer's income tax return. A taxpayer who wants to appeal the qualification issue would do so under the procedures explained in these instructions. A taxpayer must first exhaust this administrative remedy within IRS before petitioning the United States Tax Court for a declaratory judgment. If the taxpayer does not petition the Tax Court, or if the Tax Court decides the plan is not qualified, the case will be referred to the Examination Division for potential adjustment of the employer's tax liability. In that event, the IRS will not further consider the qualification issue for the plan years being examined.

Representation

You may represent yourself at the conference, or you may be represented by an attorney, certified public accountant, or person enrolled to practice before the Internal Revenue Service. Your representative must be qualified to practice before the IRS. If your representative attends a conference without you, he or she must file a power of attorney or tax information authorization before receiving or inspecting confidential information. Form 2848, Power of Attorney and Declaration of Representative, or Form 2848-D, Tax Information Authorization and Declaration of Representative, (or any other properly written power of attorney or authorization) may be used for this purpose. You can get these forms at most IRS offices.

You may also bring witnesses to support your position.

Decision by the Appeals Office

If the Appeals Office decides in your favor, that office will issue the appropriate letter to withdraw the adverse decision that you had appealed.

If the Appeals Office concurs with the key district office, the Appeals Office will issue by registered or certified mail either:

(1) A final revocation letter or final nonqualification letter if appropriate, in cases involving qualification matters, or

(2) A notice of deficiency (90-day letter) or notice of claim disallowance if appropriate, where a change in tax liability is involved.

Petition

If you and the IRS still disagree after your conference, or if you skipped our appeals system and received a notice of deficiency, you may take your case to the United States Tax Court, the United States Claims Court, or the United States District Court. These courts are independent judicial bodies and have no connection with IRS.

If you receive a notice of deficiency (90-day letter), you may:

(1) Accept the conclusion and pay any tax due, or

(2) Elect to pay the tax and file a claim for refund. (The Key District Director will consider the claim. If the facts have not changed, the key district will issue a registered notice of claim disallowance. You may then file a suit for refund in the District Court or Claims Court.), or

(3) Elect not to pay the tax and petition the United States Tax Court for a judgment regarding the tax deficiency.

If you receive a final revocation letter or final nonqualification letter, you may petition the United States Tax Court for a declaratory judgment under Code section 7476 on the qualified status of the plan. Those who may petition for a declaratory judgment are an employer, a plan administrator, an employee who qualifies as an interested party, or the Pension Benefit Guaranty Corporation.

United States Tax Court

If you receive a notice of deficiency (90-day letter), you have 90 days from the date the notice is mailed to you to file a petition with the Tax Court (150 days if the notice is addressed to you outside the United States). If you do not file the petition within the 90-day period (150 days if applicable) the law requires us to bill you for the deficiency.

If you receive a final revocation letter or final nonqualification letter, your petition to the Tax Court for a declaratory judgment must be filed before 92 days after the letter was mailed.

The Court will schedule your case for trial at a place convenient to you. You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before the Court. You can get more information from the Clerk of the Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

District Court and Claims Court

You may take your case to the United States District Court or to the United States Claims Court. Generally, these courts hear tax cases only after you have paid the tax and filed a claim for refund. If we haven't acted on your claim within 6 months from the date you filed, you can file suit for refund. If we disallow your claim, you have 2 years from the date of disallowance to file a suit for refund. You can get information on procedures for filing suit in either court from the clerk of that court.

Litigating Expenses

If certain conditions are met, you may be entitled to recover from the Government reasonable litigation expenses incurred. These include, for example, court costs, expert witness fees, cost of engineering reports, and attorney's fees. To recover these expenses, you must:

(1) substantially prevail in your case with respect to the amount or issues;

(2) show that the Government's position was unreasonable; and

(3) exhaust your administrative remedies within the IRS.

These provisions apply to civil litigation in a court of the United States, including the Tax Court. Expenses incurred solely for administrative appeal purposes within the IRS are not recoverable from the Government.

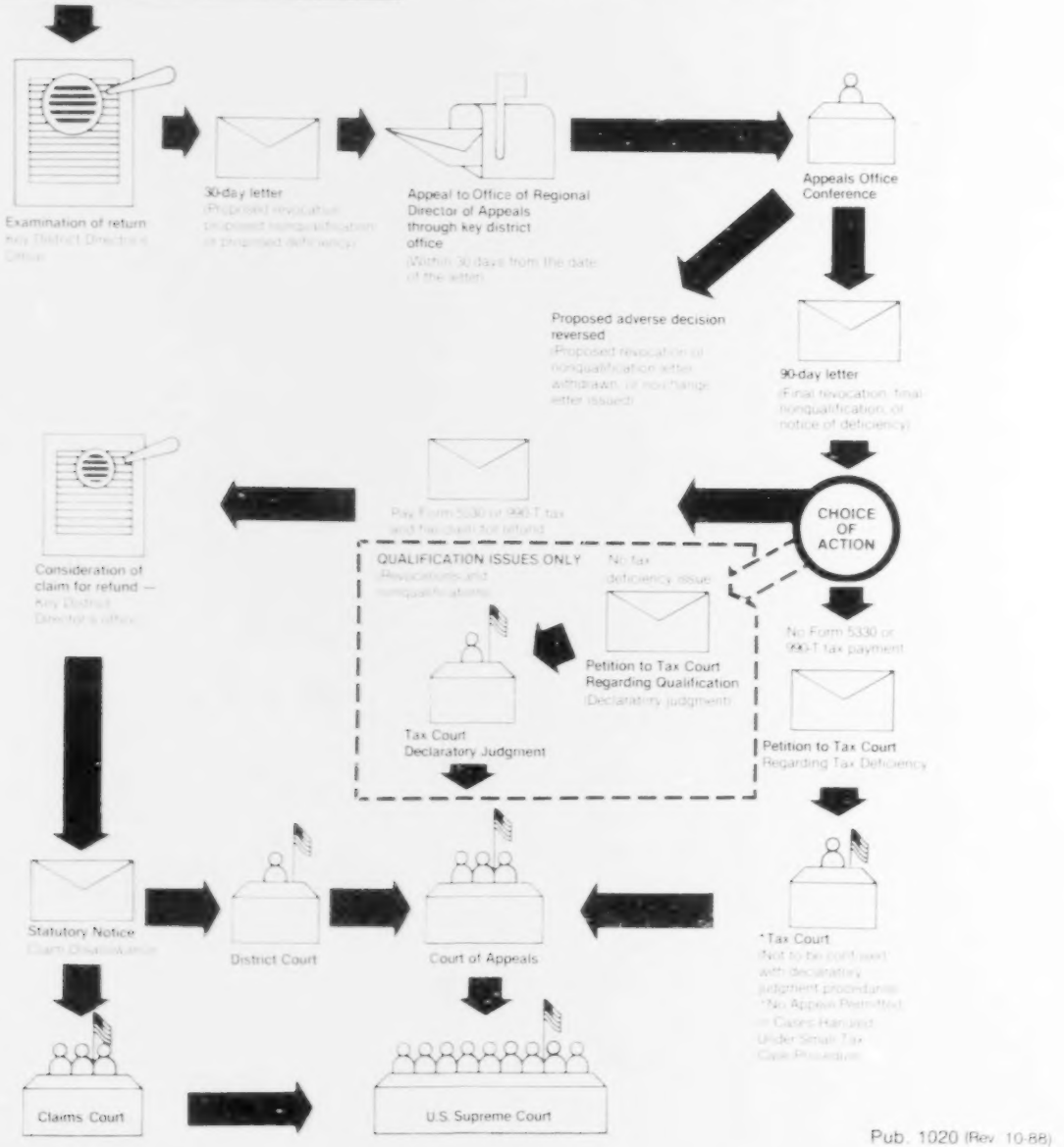
Penalty

Whenever it appears to the Tax Court that proceedings before it have been instituted or maintained by you primarily for delay or that your position in such proceedings is frivolous or groundless, damages in an amount not in excess of $5,000 shall be awarded to the United States by the Tax Court in its decision.

Appeal Procedure for Employee Plans Examinations

At any stage of procedure:

- You may arrange for agreement and payment of tax or for corrective action.
- You may ask for issuance of a notice of deficiency to allow petition to the tax court.
- You may pay the tax and file a refund claim.


Examination of return
30-day letter
Appeal to Office of Regional Director of Appeals through key district office
Appeals Office Conference
Proposed adverse decision reversed
90-day letter
CHOICE OF ACTION
Consideration of claim for refund —
QUALIFICATION ISSUES ONLY
Petition to Tax Court Regarding Qualification
Tax Court Declaratory Judgment
No Form 5330 or 990-T tax payment
Petition to Tax Court Regarding Tax Deficiency
Statutory Notice
District Court
Court of Appeals
*Tax Court
Claims Court
U.S. Supreme Court